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Treatment Of Death and Disability Claims under Title V of the International Claims Settlement Act of 1949, as Amended

Title V was added to the International Claims Settlement Act of 1949 on October 16, 1964.[1] This provided, in pertinent part,[2] for the receipt and determination by the Foreign Claims Settlement Commission of the United States, of claims of United States nationals against the government of Cuba arising since January 1, 1959, for disability or death resulting from actions of the government of Cuba. Such claims were to be submitted to the Commission within the authorized filing period (which was set as November 1, 1965 to May 1, 1967[3] plus a certain 30-day "grace" period as provided in the Commission Regulations,[4]) or within six months after the date the claim arose, whichever occurred last.

It will be noted that the language of Title V regarding this subject is explicit and thus permitted holdings deeper than possible under preceding claims programs. For example, Title III[5] of the Act provided in Section 303 for the receipt and determination of claims against Bulgaria, Hungary and Rumania, or any of them, arising out of failure to (1) restore or pay for property of United States nationals as required by the respective treaties of peace; (2) pay effective compensation for the nationalization, compulsory liquidation or other taking, prior to the effective date of the title, of property of such nationals in those countries; and (3) meet obligations expressed in currency of the United States arising prior to April 24, 1941

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[1]Pub. L. No. 88-666, 78 Stat. 1110 (1964).

[2]Sec. 503.

[3]Fed. Reg., Vol. 30, No. 212.

[4]Reg. 531.2(i).

[5]Pub. L. No. 285, Aug. 9, 1955 (69 Stat. 570); 22 U.S.C. ss. 1641-1641q (1964).

Bulgaria, and prior to September 1, 1939, in the case of Hungary and Rumania, which became payable before September 15, 1947.

The claim of Nicholas Slaninka,[6] against the government of Hungary was based upon personal injuries sustained in 1944 while serving in the armed forces of Hungary. Claimant contended that the injuries were sustained while so serving and as a result of failure to provide him with immediate medical care. The Commission, however, was constrained to hold that this claim was not within the scope of Section 303, not involving a property loss as contemplated by the treaty of peace, nor was it a claim for taking of property. It was accordingly denied.

Further, Section 304[7] provided for the receipt and determination of claims of United States nationals against the government of Italy, in accordance with a Memorandum of Understanding,[8] for certain claims arising from the war in which that country was engaged from June 10, 1940 to September 15, 1947 and which were not provided for in the treaty of peace.

Death or disability claims, against Italy, not being provided for in the treaty of peace, were not dependent upon whether they arose in Italy or ceded territory, but must rest on whether there was a violation of international law. Moreover, whereas Section 304 referred to treaty-of-peace claims, the Memorandum of Understanding referred to claims for which other provision had not been made.

The Commission[9] therefore allowed recovery to a claimant as a result of maltreatment by Italian troops who entered a synagogue in Splkt, Yugoslavia.[10] The amount awarded appears to have been based on a guide evolved from a study of several Compensation Acts.

The Claim of Julio Lopez Lopez[11] was based partly on asserted permanent disability, said to have resulted from actions of the government of Cuba. It appeared from the record that the claimant's real and personal property had been seized by Cuba in April 1962, and it appears that claimant considered this to be the cause of his later disability. The record includes certain medical data which indicated that claimant had a history of hypertension, that he was under psychiatric care for about three years until July, 1965, but was gainfully employed from 1962 until that time, and in

[6]FCSC Claim No. HUNG 21, 925, 10 FCSC Semiann. Rep. 40 (Jan. June 1959); and FCSC Dec. & Ann. 209 (1968).

[7]Pub. L. No. 85-604, August 8, 1958, amending.

[8]FCSC Dec. & Ann. 752 (1968).

[9]*See* discussion at FCSC Dec. & Ann. 278 (1968).

[10]Claim of Zadik Danon, FCSC Claim No. IT-10837, 10 FCSC Semiann. Rep. 160, (Jan.-June 1959).

[11]FCSC Claim No. CU-3259.

July 1965 suffered a cerebrovascular accident, resulting in permanent disability.

The Commission, in determining the Lopez claim, had of course to consider the rules of international law which hold that such a claim does not lie unless the government assertedly at fault is shown to have violated international law; and further, there must be shown the causal connection between the injuries and the said violation of international law.[12]

The Commission found that the cases cited by Miss Whiteman, and in its own history, involved more direct relationships between the injuries and the acts underlying the complaints, than in the Lopez case. Here clearly the claimant asserted that the confiscation of his physical property, and failure of Cuba to compensate therefor, constituted a violation of international law, resulting in a basis for certification of loss. The Commission, however, was constrained to find that the actions of Cuba were not the proximate cause of the disability and denied this part of his claim.

The claim of Michael S. Colin[13] was based in part on personal injuries of a permanent nature assertedly resulting from actions of the government of Cuba. Claimant stated that he was imprisoned in Cuba in 1959 and 1960, for about seven months, and that he had been tortured, beaten and severely injured; and that thereafter he managed to escape. Claimant had submitted copy of a decision by a Hearing Examiner on his application for disability insurance benefits before the Social Security Administration. This indicated some vagueness in the record; and moreover, claimant had a United States passport issued him in 1961 for return to Cuba, which seemed inconsistent with the alleged history of harrassment.

The Commission, after careful consideration of the entire record, found that the fact that claimant was granted some disability benefits by the Social Security Administration was insufficient to hold that he sustained a disability within the meaning of Section 503(b) which was the proximate result of actions of the government of Cuba in violation of international law.

Another claim presented to the Commission was based on personal injuries, mental anguish, slander and false arrest,[14] The evidence offered indicated that claimant was arrested, harrassed and claimant was arrested, harrassed and accused of violating Cuban laws. He submitted newspaper articles stating that his arrest and those of several others were linked to smuggling of Cuban currency from abroad. It seems he was jailed for three days, after refusing to become an informer, and then fled. He stated that at

[12]MARJORIE M. WHITEMAN, I DAMAGES IN INTERNATIONAL LAW, 517-634 (1937).
[13]FCSC Claim No. CU-4824.
[14]Claim of Bernard Weiss, FSCS Claim No. CU-2357.

the time of his arrest, however, he was forced to disrobe publicly, was threatened with death, pistol whipped during interrogation, and then released. No medical evidence was submitted in support of any asserted physical disability.

As the Commission held in the Lopez claim (*supra*) in a claim such as this, a disability must be established, and that it was the proximate result of actions taken by or under the authority of the Cuban government. There is no room for a finding of unlawful and illegal arrest, or malicious slander of reputation. Nor does public humiliation involve a disability within the scope of the Act. None of the asserted actions resulted in such disability. And in the absence of persuasive evidence thereof, this part of the claim was denied.

Similarly in the Claim of Zena K. Feldman,[15] which was based in part of a nervous breakdown, the assertions were that this resulted from confiscation of her property and other Cuban government actions. The Commission had found that claimant left Cuba in April 1961, and further that her real and personal properties were intervened in April 1962. It appears that she applied for psychiatric treatment in about 1963, and remained in therapy at the Northeast Mental Health Clinic for eleven weeks. Additionally, she was seen at the Philadelphia Psychiatric Center from June 1963 to February 1964. The Center considered that the loss of her material possessions in Cuba undoubtedly was instrumental in contributing to the depression of the claimant.

Here again, however, the Commission found that claimant had not sustained the burden of proof in submitting convincing evidence that any disability incurred was the proximate result of actions taken by the government of Cuba, and this item of her claim was denied.

The Claim of Drexel W. Gibson[16] disclosed that he had been arrested and imprisoned by Cuban authorities. Claimant asserted that his health was thus permanently impaired, that he suffered an injury to his back as a result of a fall when prodded by a bayonet, and that some of his teeth were broken in masticating prison food. He also made claim for false arrest. It was said that most of the dental and medical work was done in Cuba and bills were not available. There was, however, no corroborative evidence in support of the asserted disability. Moreover, it would not be sufficient to show that there may have been a violation of international law in the imprisonment of claimant if in fact a disability had not been caused. Again, the statute does not provide for false arrest claims.

[15]FCSC Claim No. CU-0091.
[16]FCSC Claim No. CU-2154.

In the case of Geraldine I. Shamma[17] the claim was based in part on asserted personal injuries. Claimant admittedly was engaged in counter-revolutionary activities in Cuba. She was arrested, tried and convicted in December 1960 of crimes against the Cuban Government along with a number of other persons. It appears that she served about three years of a ten-year sentence. Claimant asserted that, prior to the trial, she had been subjected to severe questioning as a result of which she suffered a heart attack; further, that she was struck with a gun butt on the side of her head, resulting in injury to her left ear; and that she suffered a second heart attack while imprisoned.

The record, however, indicated clearly that while in prison claimant had been visited by representatives of the American Embassy and other representatives who reported that she confirmed she was well treated. She had stated in 1962 that she was not subjected to cruelty and had no complaint against prison authorities. Further, claimant herself had published an article subsequent to her release copy of which was of record and which held no word of injury or disability suffered by her.

The Commission found that the record did not corroborate her current version as to the origin of her disabilities. Although she may have suffered heart attacks and may have been disabled, it does not follow that this was the proximate result of Cuban government actions in violation of international law. In fact, while in prison she was hospitalized and given needed medical attention. Thus, finding that claimant failed to sustain the burden of proof regarding this part of her claim, this item was denied.

Several claims were presented to the Commission, based on deaths resulting from actions taken by or under the authority of the government of Cuba. The first of these examined was based in part on the death of Robert Otis Fuller.[18] The immediate allegation in this case was that Robert Otis Fuller, an ex-United States Marine, was placed on trial in Santiago de Cuba for counterrevolutionary activities. He was convicted and executed the following day. As set out in the Lopez claim *(supra)*, in a claim based on disability it must also be shown that actions of the government of Cuba, in violation of international law, were the cause of the disability. The Commission held that in a claim based on death it must also be shown that this was the proximate result of like actions by the government of Cuba.

The record before the Commission reflected that Robert Otis Fuller, as well as another American, was captured and arrested on October 15, 1960, in Santiago, Cuba. Two Cuban nationals were taken at the same time. All

[17]FCSC Claim No. CU-2593, 1969 FCSC Ann. Rep. 49.
[18]Claim of Jennie M. Fuller, *et al.* FCSC Claim No. CU-2830.

four were charged with promoting an uprising of armed persons against the State. A trial was held at four o'clock in the afternoon of the same day, before a Revolutionary Tribunal. The American Consul was present. Further, Fuller had experienced Cuban counsel who is said to have done the best he could. The defendants at this trial admitted their guilt.

At the trial, one of the Cuban nationals had been pointed out as being the leader of the group. However, the two Americans were sentenced to death and the Cuban nationals were each sentenced to thirty years imprisonment. Appeals were heard immediately after the trial. The defense counsel, during the trial and during the appeal argued that it was an injustice to seek and decree greater punishment for the Americans than for the Cubans. The appeals were heard in five minutes, and after about ten minutes' deliberation the sentences were upheld. The two Americans were executed on October 16, 1960.

That a state has authority to punish persons within its jurisdiction who are guilty of violating its laws, is well recognized. And a State may sentence to death one convicted of counterrevolutionary activities. However, it was clear from the record, and this was substantiated by the argument of the Cuban defense counsel, that the two Americans were executed because of their nationality, and despite the evidence that the two Cuban nationals were equally guilty. It followed that the Commission had first to determine, in this claim, whether the sentence and execution of Robert Otis Fuller by the government of Cuba was in violation of international law.

It has been stated that "The rule of international law is well settled that an alien who has been taken into custody by the authorities of a state, is entitled to receive from those authorities just and humane treatment, regardless of the offense with which he is charged, and that failure to accord such treatment renders the state liable in damages."[19]

Mr. Edwin M. Borchard has discussed this matter at length.[20] In discussing the civil rights of an alien, he stated that whereas an alien must submit to proceedings brought in accordance with law on a charge that an

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[19]HACKWORTH DIGEST OF INT'L L. (1943) 606. The same authority continues:
The Research in International Law, Harvard Law School, in connection with the *Draft Convention on Jurisdiction with Respect to Crime,* stated in article 12: In exercising jurisdiction under this Convention, no State shall prosecute an alein who has not been taken into custody by its authorities, prevent communication between an alien held for prosecution or punishment and the diplomatic or consular officers of the State of which he is a national, subject an alien held for prosecution or punishment to other than just and humane treatment, prosecute an alien otherwise than by fair trial before an impartial tribunal and without unreasonable delay, inflict upon an alien any excessive or cruel and unusual punishment, or subject an alien to unfair discrimination." (29 A.J. INT'L L. Supp. (1935) 596-597.)

[20]DIPLOMATIC PROTECTION OF CITIZENS ABROAD, 142.

offense has been committed, the proceedings must be regular and conducted in good faith and in accordance with the law and forms of civilized justice, and "must not be arbitrary or unnecessarily harsh or discriminate against the alien on account of his nationality."

Moreover, Mr. Borchard has pointed out that on occasions claims were successfully prosecuted by the Department of State, or allowed by international commissions on grounds including "punishment disproportionate in severity to the offense charged." He has continued to point out[21] that "any discrimination against the alien, *e.g.*, a graver punishment than that inflicted upon nationals, prejudicial irregularity in judicial proceedings, violation of treaties or international law, constitutes a denial of justice and opens the right to diplomatic interposition."

The United States forwarded to the government of Cuba its formal protest in the matter of the Fuller trial (and the others involved).[22] Vigorous protest was made to the manner in which the trial was conducted, contending that the lack of basic humanitarian standards and the sentences against the American citizens were clearly discriminatory. The note to the Cuban Foreign Ministry (delivered November 11, 1960) continued that defendants in a criminal case are entitled to fundamental humanitarian rights, particularly when the death sentence may be imposed.

In the Fuller case, it was asserted that "there was wholly inadequate time to prepare an appeal;" that it took place less than an hour after the verdict; and that the "summary nature" of the proceedings was illustrated by the fact that the appeal was denied after only ten minutes of deliberation. Further the note pointed out that in the four cases tried on October 15, 1960, all were on identical charges, but only the two Americans received death sentences, leading to the conclusion that discrimination was practiced by the Cuban Tribunal.

The Commission, having considered all of the foregoing, was perforce constrained to hold that the imposition of the sentence of death on Robert Otis Fuller for the Same crime for which the Cuban nationsls received sentences of thirty years' imprisonment, was a discrimination directed to a person alien to the Republic of Cuba, disproportionate to the punishment accorded the Cuban nationals, thus constituting a denial of justice and a violation of international law for which the Government of Cuba is accountable, within the scope of Title V of the Act.

The next question necessary to be answered by the Commission, was that of to whom the government of Cuba is accountable. The Act pro-

[21] *Supra*, note 2, Sec. 44.

[22] Whiteman, 8 DIGEST OF INT'L L. 719.

vides[23] that a claim for death may be considered if filed by the personal representative of decedent's estate or by person or persons for pecuniary losses and damage sustained on account of such death. In fact, the claim was filed by the parents of the decedent. As Miss Whiteman points out[24] a claim for death by wrongful act is made not for the benefit of the estate, but for the benefit of the surviving dependents; it must be shown not only that the respondent State has committed a wrong, but that the individual claimant has suffered a pecuniary loss or injury.

The record showed that Robert Otis Fuller was divorced but was survived by a daughter, Lynita Gay Fuller, then approximately six years old, to whom he owed the parental obligations of support and education during her minority.[25] The Commission found that the child suffered a loss within the meaning of the Act, on October 16, 1960. Accordingly, she was added as a claimant in this matter, and the Commission denied so much of the claim of the mother and heirs of the now deceased father of Robert Otis Fuller, as was based on his death.

The Commission had now to meet the question of the extent of the indemnity to which the decedent's daughter was entitled. It is to be noted that under Title V of the International Claims Settlement Act of 1949, the Commission was required to determine the amount as well as validity of the claims against Cuba. This resulted in a different method of evaluation from that of Title II of the War Claims Act of 1948 (infra), no gratuity being involved, and required a specific finding in each case.

Miss Whiteman has stated[26] that more recently such indemnities have generally been estimated on the basis of the worth (to the claimant) of expected contributions of the decedent. The Commission considered this matter at length, and having ascertained the prior income of Robert Otis Fuller, found that the expected contributions to his daughter from the date of death to her majority would have amounted to a sum of $20,000, and so certified.

Another claim based in part on a death resulting from actions of the government of Cuba, concerned the case of Howard F. Anderson.[27] Mr. Anderson had been arrested by Cuban authorities on March 16, 1961. On April 14, 1961, formal charges were made accusing him of crimes against the State. The trial was held on April 17, 1961 and continued to 12:45 a.m. of August 18th. On the afternoon of that day he was found guilty and was

[23]Sec. 504(b).
[24]1 Damages, *supra* 640.
[25]*Id.* at 639, 649.
[26]*Id.* at 660.
[27]Claim of Dorothy S. McCarthy, *et al.* FCSC Claim No. CU-0697.

sentenced to death. The appeal was heard the same night and the sentence affirmed, although the appeals court pointed out that the acts did not constitute the crime charged, but were in violation of some other section.

The entire record before the Commission disclosed that defense attorneys had no opportunity to prepare arguments for the trial and appeal, the change of the charge against the accused after conviction, the apparently insignificant acts of Mr. Anderson who did not belong to any group acting against the State; and considering the animosity of the Cuban government, the Commission had no difficulty in holding that there was a denial of justice in the matter, by the government of Cuba in violation of international law, holding the government of Cuba accountable within the scope of the Act.

The claim had been asserted in the amount of $835,200 based upon a yearly income of Mr. Anderson of $28,000 and a life expectancy of 29 years, being 41 years old at the time of his execution. However, the Commission was to certify the losses to claimants, based on expected contributions to them from the deceased.

Mr. Anderson was survived by his widow and four minor children. The record included evidence as to the business activities of the decedent from which the Commission determined that he had a substantial business. Some of his business interests were also involved in other claims before the Commission. It was found that considering the average income of Mr. Anderson and his life expectancy, the expected contributions to his family were $3,000 each. Thus, the contributions to be expected by the children were $18,000, $30,000, $39,000 and $48,000 a total of $135,000. The remainder accruing to the widow for 32 years was $345,000. This loss was suffered on the date of death and is not affected by the later remarriage of the widow.

It may be seen from the foregoing that the treatment permitted death or disability claims under Title II[28] of the War Claims Act of 1948, as amended, appeared somewhat more routine. Section 202(d) of this Act provided in part for claims based on death or injury, or permanent disability, sustained by any person, then a civilian national of the United States as a result of military action by Germany or Japan which occurred between September 1, 1939 (the date of the opening of World War II) and December 11, 1941 (when the United States entered the war against Germany).

The criteria to be met, apart from United States nationality, was whether the person was a civilian, as distinguished from having military status;

[28]Pub. L. No. 87-846, Oct. 22, 1962 (76 Stat. 1107).

whether he was a passenger, rather than a ship officer or crew member; whether in fact the death or injury occurred while aboard a commercial vessel during the stated time; and that the injury or disability was the proximate result of the military action specified. In reaching the amounts of awards which could be granted, the Commission noted[29] that the War Claims Act of 1948 is remedial legislation, seeking to accomplish a humane purpose—any rights thereunder are statutory and payments would be gratuities. Accordingly, the rules holding in tort were ignored and the Commission fixed the awards without regard to such factors as life expectancy, prospective earnings and the like.

[29]Claim of Clara Emma Tinney, FCSC Claim No. W-1276, 20 FCSC Semiann. Rep. 41 (Jan.-June 1964); and Claim of Robert Newton Pritchard, FCSC Claim No. W-009, 22 FCSC Semiann. Rep. 46 (Jan.-June 1965); *and see* FCSC Dec. & Ann. 640 (1968).